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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 SARAH G. GORENA,

11 Plaintiff,

12 v.

13 AETNA LIFE INSURANCE  
14 COMPANY,

15 Defendant.

CASE NO. C17-532 MJP

ORDER ON CROSS-MOTIONS  
FOR SUMMARY JUDGMENT

16 The above-entitled Court, having received and reviewed:

- 17 1. Plaintiff's Motion for Summary Judgment (Dkt. No. 29), Aetna's Opposition to  
18 Plaintiff's Motion for Summary Judgment (Dkt. No. 34), and Plaintiff's Reply in  
19 Support of Plaintiff's Motion for Summary Judgment (Dkt. No. 36);  
20 2. Aetna's Cross-Motion for Judgment on the Administrative Record (Dkt. No. 31),  
21 Plaintiff's Response to Aetna's Cross-Motion for Judgment on the Administrative  
22 Record (Dkt. No. 33), and Aetna's Reply in Support of Aetna's Cross-Motion for  
23 Judgment on the Administrative Record (Dkt. No. 35);  
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1 and the Administrative Record (Dkt. No. 32) filed in conjunction with this proceeding, rules as  
2 follows:

3 IT IS ORDERED that Defendant's Cross-Motion for Judgment on the Administrative  
4 Record is DENIED.

5 IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment is  
6 GRANTED. Defendant is ordered to approve and pay Plaintiff's long-term disability claim to  
7 the present.

8 IT IS FURTHER ORDERED, pursuant to 29 U.S.C. § 1132(a)(1)(B), that Defendant  
9 continue to pay Plaintiff's long-term disability claim to the policy's maximum benefit absent a  
10 showing of improvement in her medical record such that a reasonable physician would conclude  
11 that she could work in any reasonable sedentary occupation in the competitive workforce (as  
12 defined by the Plan) for which she has the education, training and experience, and is capable of  
13 performing productively, full-time, without undue disruptions and absences due to her MS and  
14 its related symptoms.

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16 **Background**

17 **Plaintiff's Condition and Medical/Psychological History**

18 Plaintiff worked for Boeing as a Staff Analyst from February 2005 through July 20, 2015.  
19 (Stip. Admin. Record ["AR"] at 7916.) She was diagnosed with multiple sclerosis ("MS") in  
20 2007. (AR 8409.) Her disability request is based solely on her MS, but over the years she has had  
21 co-diagnoses of chronic lumbar back pain, joint pain, polycystic ovary syndrome accompanied  
22 by morbid obesity, gastrointestinal difficulties following bariatric (weight loss, migraine) surgery  
23 (AR 109-12, 3419, 8409-11, 8423-26), depression (AR 7904), and substance abuse (from which  
24 she has been in recovery since mid-2014; AR 8462, 8578, 6666).

1 From 2013 to 2015, six short-term medical leaves (Short Term Disability or “STD”) for  
2 MS symptoms were approved. (AR 8524.) Additionally, Plaintiff has had two ER visits and  
3 received numerous steroid injections to treat her condition. (AR 8504, 6911, 3026, 4898, 8510,  
4 6667, 6929, 399.)

5 Plaintiff’s treating physician is Dr. Reif, who has maintained a clinical practice since  
6 1982, conducted MS research (including clinical drug trials), taught other medical professionals,  
7 and performed disability/employability determinations for years. (AR 8407.) Dr. Reif has been  
8 treating Plaintiff since October 2007; i.e., over 8 years by the time Plaintiff applied for long-term  
9 disability (“LTD”). (AR 1635, 8409.)

10 Plaintiff’s treating physician has chronicled a decline in Plaintiff’s condition since 2015.  
11 A January 2015 MRI detailed a further progression of the disease from a 2012 baseline,  
12 including new lesions in the spinal cord. (AR 8423-24, 8462.) Another flare in February 2015  
13 prompted Dr. Reif to note the “increasing frequency of relapses” and to speculate that Plaintiff  
14 might be a candidate for a stem cell transplant. (AR 8462-63.) Plaintiff had not worked since  
15 January 2015 (AR 8462) and Dr. Reif authorized medical leave through February 23, 2015. (AR  
16 7430-32.)

17 By mid-2015, Plaintiff was also experiencing increasing bowel problems: her GI  
18 specialist (Dr. Ramakrishnan) diagnosed the symptoms as “MS-related constipation” so severe  
19 that he authorized a medical leave for Plaintiff from April 8 through May 20, 2015. (AR 7390-  
20 95, 7406.) She was also diagnosed in May 2015 with ‘Major Depressive Disorder due to  
21 medical condition.’ (AR 7904.)

22 Plaintiff’s medical records were reviewed by Aetna physicians in relation to an STD  
23 request in May-June of 2015. A neurologist (Dr. Cohan) analyzing Plaintiff’s records adjudged  
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1 that she was not functionally impaired neurologically from April 8 to July 14, 2015. (AR 7376.)  
2 Dr. Cohan conferred with Dr. Reif on July 27, 2015 and reported that Dr. Reif disclosed no  
3 functional impairments during the period in question. (Id.)<sup>1</sup> A gastroenterologist (Dr. Molina)  
4 noted that, while bowel accidents and incontinence were a “nuisance,” they did not represent  
5 functional incapacity and that no examinations or clinical findings documented a loss of function  
6 during the April – July 2015 period. (AR 7370.) STD benefits were ultimately approved  
7 through June 1, 2015, on the basis of behavioral health issues and withdrawal from anti-  
8 depressant medication. (AR 7800.)

9 Plaintiff made her claim for LTD benefits on July 20, 2015. Defendant requested  
10 additional records and a clinical consultation to evaluate her request. In October 2015, Dr. Reif  
11 chronicled her worsening condition (balance problems, bladder dyscontrol, trouble finding  
12 words, depression) and opined that “it is clear that she really is not able to work at competitive  
13 employment anymore for a combination reasons.” (AR 8440-41.) A new MRI revealed multiple  
14 new brain lesions, including one “consistent with a black hole” lesion. (AR 8418; this lesion  
15 either resolved or diminished later.)

16 In December 2015, Dr. Reif found Plaintiff “still significantly disabled with her balance  
17 and fatigue in general and also particularly with her mood,” and stated that she “support[ed] her  
18 permanent disability due to the multiple medical issues.” (AR 8568.) In that same month, Dr.  
19 Reif completed an Attending Physician Statement (“APS”) which included her October 2015  
20 office note and an MRI report, noting symptoms of imbalance, falling, numbness, and  
21 depression, and the presence of “multiple enhancing lesions” in the MRIs. (AR 8574-83.) Her

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22 <sup>1</sup> The Court will ignore the hearsay issue inherent in this evidence and simply note that what Dr. Cohan *says* that Dr.  
23 Reif said is at odds with what she stated in her own reports at the time (“Overall she is having more symptoms, and  
24 not returning to normal as far as leg strength goes;” AR 8463, from Feb. 4, 2015), and is certainly contradicted by  
Dr. Reif’s later statements.

1 conclusion: “Severe limitation of functional capacity; incapable of minimal (sedentary) activity.”  
2 She rated Plaintiff’s physical impairment as Class 5 and said that Plaintiff would never return to  
3 work. Furthermore, she predicted an increased decline in Plaintiff’s condition. (AR 8576.)

4 Additionally, there are reports from a psychologist and psychiatrist confirming her  
5 disabled condition. Psychologist Dr. Davis (who had treated Plaintiff for nine years) identified  
6 Plaintiff as “disabled” in August 2015 on the basis of a “mood disorder due to medical  
7 condition.” (AR 8604.) In January 2016, Dr. Davis again declined to authorize Plaintiff’s  
8 return to work. (AR 8528.) After examining Plaintiff in October 2015, psychiatrist Dr. Proano  
9 noted that her “[e]nergy and ability to sustain executive functioning are greatly exacerbated by  
10 severe M/S” (AR 8611), which he identified in January 2016 as her “primary disabling  
11 condition.” (AR 8530; emphasis in original.)  
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### 13 History of LTD Claim

14 Upon receipt of Dr. Reif’s December 23, 2015 APS form, an Aetna nurse (Mr. Thornton)  
15 logged a “Clinical Review” which attributed Plaintiff’s limitations “solely to depression  
16 symptoms” and suggested a behavioral health evaluation (AR 7948-49), which resulted in the  
17 January 16, 2016 report by Dr. Davis diagnosing Plaintiff with “[d]epression due to medical  
18 condition.” (AR 8526.) Plaintiff was then interviewed by one of Aetna’s “Behavioral Health  
19 Specialists” (AR 7958-60). Nurse Thornton added additional notes indicating that his prior  
20 determination was unchanged (AR 7971) and on January 24, 2016, Defendant denied Plaintiff’s  
21 LTD claim, finding that Plaintiff’s “intact strength, coordination, and no spasticity with only  
22 mild sensory issues to feet” left her able to perform sedentary work. (AR 8113-15.)  
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1 Plaintiff appealed the denial, submitting Dr. Reif's resume, chart notes, two letters from  
2 Dr. Reif, a list of her MS-related medical leaves since 2013, and a Physical Residual Functional  
3 Capacity Assessment ("FCE"). (AR 8396-8537.) Dr. Reif's February 4, 2016 letter chronicled  
4 the "cumulative effect" of living with MS for 18 years and listed clinical findings (chronic  
5 imbalance, sensory loss, depression, diminished executive function, bowel/bladder accidents and  
6 accidental falls) in support of her conclusion that it was "impossible for her to maintain  
7 employment." (AR 8409-10.) She pointed out that the October 2015 MRI showed "at least 50  
8 old lesions, three new active enhancing lesions and new 'black hole' ... indicating that she has  
9 reached the point of complete cell death in that region." (Id.) Dr. Reif pointed out that the  
10 lesions were located in the areas of the brain associated with personality, mood, and memory.  
11 (Id.)

12 Aetna's response was to characterize Dr. Reif's letter as "advocating for EE(*employee*)'s  
13 disability" (AR 8002) and to conclude that "[t]here are no additional exam or diagnostic  
14 findings... to alter the prior determination." (AR 8005.)

15 Dr. Reif responded by authoring a second letter in March 2016, summarizing the  
16 symptoms and findings that pointed to the "increasing cumulative effect of this illness on her"  
17 and the "pattern of increasingly severe relapses." (AR 8413-14.) She also described symptoms  
18 identified by a neuro-ophthalmologist which included bilateral optic nerve damage and loss of  
19 color vision. (AR 8415.) She indicated by means of an FCE all the physical limitations which  
20 would preclude Plaintiff from returning to even sedentary work, including an inability to sit for  
21 more than 6 hours, fatigue, cognitive dysfunction, limits on her ability to stand, walk, lift or  
22 carry, and limited left eye function. (AR 8416, 8418.)  
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1 Aetna referred Plaintiff's appeal to a neurologist (Dr. Graham) whose review revealed  
2 "neurological examinations with no progressive decline in examination status," "intact vision,  
3 cognition, and speech, as well as intact motor strength" with only minor sensory loss, and normal  
4 walking ability (while observing that "morbid obesity... [is] noted to affect walking and balance  
5 difficulty." (AR 8333.) The appeal was denied.

6 A final July 12, 2016 letter from Dr. Reif summarized a June 2016 exam and new MRIs.  
7 She reported "more difficulties with balance and fatigue and "ongoing disease progression"  
8 revealed by the brain MRI. She recommended a 3-day IV steroid treatment, a second opinion  
9 consult on more aggressive MS drugs and that Plaintiff not return to work "on the basis of her  
10 disease both from the physical standpoint (weakness and fatigue), as well as her cognitive  
11 issues." (AR 8347-51.)

12 Aetna's response was to conclude that the new clinical records did not "provide clinical  
13 correlation for any specific restrictions" precluding sedentary work. After reiterating Dr.  
14 Graham's conclusions regarding Plaintiff's "intact vision, cognition and speech, as well as intact  
15 motor strength," the company again denied her appeal. (AR 8129, 8333.) This lawsuit followed.

## 17 **Discussion/Analysis**

### 18 Standard of review

19 Because the Plan is insured by Defendant in the State of Washington, *de novo* review is  
20 required. WAC 284-50-321. *See Landree v. Prudential Ins. Co. of Amer.*, 833 F.Supp.2d 1266,  
21 1274 (W.D. Wash. 2011). Neither party contests that this is the appropriate standard of review.

1 Disability test under the Plan

2 There is a two-part test of disability under the Plan:

3 (1) an initial “own occupation” test:

4 From the date that you first become disabled and until monthly benefits are payable for  
5 24 months, you will be deemed to meet the test of disability on any day that:

- 6 • You cannot perform the **material duties**<sup>2</sup> of your **own occupation**<sup>3</sup> solely  
7 because of an **illness, injury** or disabling-pregnancy-related condition; and
- 8 • Your work earnings are 80% or less of your **adjusted predisability earnings**.

9 (AR 8732; emphasis in original.)

10 (2) a final, “any reasonable occupation” test: after the first 24 months of LTD benefits,  
11 the test changes and requires the claimant to demonstrate an inability “to work at any **reasonable**  
12 **occupation** solely because of an illness, injury or disabling-pregnancy-related condition.” (Id.;  
13 emphasis in original.) “Reasonable occupation” is defined as “any gainful activity for which you  
14 are, or may reasonably become, fitted by education, training, or experience and which results in,  
15 or can be expected to result in, an income of more than 60% of your adjusted predisability  
16 earnings.” (AR 8754.)

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18 <sup>2</sup> “Material duties” are defined as:

19 Duties that:

- 20 • Are normally required for the performance of your own occupation; and
- 21 • Cannot be reasonably omitted or modified. However to be **actively at work** in excess of 40 hours  
22 per week is not a material duty.

23 (AR 8572; emphasis in original.)

24 <sup>3</sup> “Own occupation” is defined as:

The work that you are routinely performing when your period of disability begins. Your occupation will be  
viewed as it is normally performed in the national economy instead of how it is performed:

- For your specific employer; or
- At your location or work site; and
- Without regard to your specific reporting relationship

(AR 8573.)



1 Conflicting medical evaluations

2 The responsibility which ERISA imposes on plan administrators sets a high standard:

3 [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the  
4 participants and beneficiaries and—

5 (A) for the exclusive purpose of:

6 (i) providing benefits to participants and their beneficiaries.

7 ERISA § 404, 29 U.S.C. § 1104.

8 This is the context in which the analysis performed by Aetna and the resulting denial of  
9 benefits must be evaluated. It is the considered opinion of this Court that the company's conduct  
10 falls well below the statutory standard for their fiduciary duty.

11 Defendant had the benefit of a series of first-hand reports from a highly-qualified  
12 physician who had been treating Plaintiff since 2007. Over the course of 18 months (January  
13 2015 – June 2016), she provided 4 sets of MRI scans which documented the increasing severity  
14 of Plaintiff's symptoms, along with clinical findings and the patient's own reports which  
15 corroborated the steady increase of her MS and her doctor's professional evaluation of Plaintiff's  
16 inability to discharge her duties.

17 Aetna's response to those reports was to either ignore or misstate those portions which  
18 did not support their decision to deny, or cherry-pick statements out of context which belied Dr.  
19 Reif's conclusions and (again) supported Defendant's assessment of Plaintiff's fitness for work.  
20 The examples of this are numerous.

1 The initial analysis of Plaintiff's request for LTD benefits<sup>4</sup> contained a review of two  
2 reports from Dr. Reif, created in October and December of 2015. In the October report, Dr. Reif  
3 noted:

4 INTERVAL HISTORY: ... She has been noticing that her balance is off. She keeps  
5 falling down. She has such bladder dyscontrol. She has accidents before she can make it  
6 to the bathroom. She feels mentally "off." She is having trouble with word finding. She  
7 is also very depressed... When we did her last brain MRI in February 2015, there were  
8 signs of a vaguely enhancing lesion in the left temporal lobe that had not been there  
previously... There were also at least another 10+ lesions new that were nonenhancing  
between the 2013 and 2015 brain MRI suggesting progression of disease more silently...

\* \* \* \*

9 IMPRESSION: Her sensory examination certainly is changed from our last evaluation...  
10 the chronic staxia with subjective worsening is also present. How much of her  
11 communication difficulties now are just due to the effects of her depression versus  
multiple sclerosis is unclear. It is clear that really she is not able to work at competitive  
employment for a combination of health reasons.

12 PLAN: ... I think that she should be on some short-term disability and really this is  
leading to something long-term...

13 (AR 8440-41.)<sup>5</sup>

14 In the December report, Dr. Reif stated:

15 IMPRESSION:

- 16 1. Multiple sclerosis: She does show some objective improvement with her base on her  
17 Romberg testing<sup>6</sup> and she did have a clear exacerbation. She is still significantly  
disabled with her balance and fatigue in general and also particularly with her mood.  
18 2. Depression. This remains very problematic.

PLAN: I support her permanent disability due to multiple medical issues.

19 (AR 8568.)

21 \_\_\_\_\_  
22 <sup>4</sup> Performed, not by a doctor, but by a nurse whose qualifications to evaluate Plaintiff's condition and prognosis  
were not placed in evidence.

23 <sup>5</sup> There was also an October 2015 MRI scan which reported "[a] new enhancing lesion... consistent with a black  
hole lesion."

24 <sup>6</sup> An eyes-closed balance test.

1 Nurse Thornton's review of Dr. Reif's findings:

2 The APSs and BHCS primarily report mental nervous symptoms....

3 The clinical exam finds intact strength, coordination and no spasticity with only very  
4 mild sensory issues to feet... that does not affect ee's (*employee's*) ability to ambulate  
5 unaided.

6 Any L/R's (*limitations/restrictions*) to sedentary work function should be attributed  
solely to depression symptoms that should have BHU (*Behavioral Health*) evaluation.

7 (AR 7948-49.) The nurse's opinion that Dr. Reif "*primarily* report[ed] mental nervous  
8 symptoms" and that Plaintiff's limitations "should be attributed *solely* to depression symptoms"  
9 (emphasis supplied) almost lead the Court to believe that he did not read Dr. Reif's  
10 documentation and conclusions regarding Plaintiff's condition closely.

11 Plaintiff submitted a series of MRI scans which revealed the progression of her MS over  
12 time. An October 2012 MRI showed "2 or 3 new lesions that were not fresh or acute and one  
13 lesion that was enhancing... and suggested it was active." (AR 4898; Dr. Reif's December 2012  
14 report.) An April 2013 MRI of Plaintiff's brain (taken when she was hospitalized for  
15 exacerbated MS symptoms) demonstrated "numerous enhancing lesions." (AR 8475.) An  
16 October 2015 scan revealed an area commensurate with a "black hole" lesion. (AR 8410.) A  
17 June 2016 MRI prompted a letter from Dr. Reif, concerned that the scan "has displayed again  
18 ongoing disease progression." It is apparent to the Court that Defendant's medical analysts  
19 simply ignored this information, as well as Dr. Reif's characterization of Plaintiff's "downhill  
20 course over the last four years," as demonstrated by a "pattern of increasingly severe relapses."  
21 (AR 8414-15.)

22 Aetna did not have a doctor review Plaintiff's application until she appealed the denial of  
23 her LTD request. Dr. Graham reviewed years of Dr. Reif's medical records and letter, 10 MRIs,  
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1 14 psychological reports and 16 APS forms and concluded that Plaintiff was capable of doing  
2 full-time sedentary work. (AR 8329-35.) He justified this conclusion by cherry-picking every  
3 phrase or sentence from the materials which was indicative of some aspect of Plaintiff's  
4 condition that was "stable" or "normal." In the face of Plaintiff's reports of trouble word-  
5 finding, falling down and incontinence, and Dr. Reif's findings indicating poor balance,  
6 weakness in various muscles, sensory loss, and problems with executive function and memory  
7 (AR 8410, 8414, 8462-63, 8532-33), he noted "intact vision, cognition, and speech, as well as  
8 intact motor strength, with some patch sensory loss in the distal legs and feet." He attributed her  
9 difficulties walking and balancing to her excessive weight (AR 8333), characteristic of an overall  
10 pattern on the part of Aetna's analysts of assigning Plaintiff's negative symptoms to everything  
11 *except* her MS (i.e., her weight, her (former) substance abuse and her psychological/behavioral  
12 problems).

13 Perhaps the most egregious example of the refusal of Defendant's physicians to address  
14 any report or medical evidence which did not conform to their decision to deny LTD benefits is  
15 Dr. Reif's March 2015 FCE (Functional Capacity Evaluation) report. In that report, Dr. Reif  
16 stated unequivocally that Plaintiff was unable to stand or sit for sufficient periods of time in an 8-  
17 hour workday due to the fatigue and cognitive dysfunction resulting from her MS; that "she has  
18 poor strength and balance due to her MS;" that she is "likely to fall over if too much motion of  
19 arms is required;" and that she had visual limitations due to "optic neuritis in left eye." (AR  
20 8515-18.) This FCE report is mentioned nowhere in any of the clinical reviews undertaken by  
21 Aetna's physicians.

22 Dr. Reif submitted a final letter in July 2016 which described "more difficulties with  
23 [Plaintiff's] balance and fatigue" and reported a June MRI showing further progression of the  
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1 MS. Dr. Graham submitted an addendum which noted the additional evidence but indicated  
2 (without analyzing the new data) that “the additional information submitted does no[t] change  
3 my prior assessment.” (AR 8342.)

4 The Court is forced to conclude that, where Defendant’s reviewing physicians could not  
5 selectively quote isolated statements out of context to support a denial, they either misstated  
6 those conclusions or simply ignored the evidence and conclusions presented by Plaintiff and her  
7 treating physician. Wherever possible, Defendant’s medical reviewers attribute Plaintiff’s  
8 functional limitations to her obesity or her depression.

9 Nowhere in the Administrative Record is there any indication that Plaintiff’s obesity is a  
10 symptom of her MS, and it is unquestionably a contributing factor to her restrictions. But none  
11 of the physicians who actually examined Plaintiff identified her weight as the primary cause of  
12 her limitations. Her depression, on the other hand, while it may be due in some measure to  
13 factors not associated with her MS, can clearly not be viewed independently from her chronic  
14 illness. It is not only logical that someone suffering from a debilitating incurable condition  
15 would experience depression, but there is ample documentation tying her depression directly to  
16 her MS.<sup>7</sup> The insistence of Aetna’s medical reviewers in identifying it as not only a completely  
17 independent condition but the primary source of her disability can only be viewed as an  
18 outcome-driven assessment made at the expense of the overwhelming weight of the evidence to  
19 the contrary.

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23 <sup>7</sup> See AR 7904 – “Major Depressive Disorder due to medical condition;” AR 8526; AR 8604 – psychologist Dr.  
24 Davis’s diagnosis of Plaintiff as “disabled” on the basis of a “mood disorder due to medical condition.”

1        Additionally, the clinical reviews completely overlook Plaintiff's subjective reports of  
2 her symptoms (which lend further support to her assertions of disability due to MS), without  
3 stating any basis for questioning her credibility.

4        Defendant cites to case law that ERISA plan administrators are not required  
5 "automatically to accord special weight to the opinions of a claimant's physician; nor may courts  
6 impose on plan administrators a discrete burden of explanation when they credit reliable  
7 evidence that conflicts with a treating physician's evaluation." Black & Decker Dis. Plan v.  
8 Nord, 538 U.S. 822, 834 (2003). It is an argument against a non-existent opposing view:  
9 Plaintiff did not invoke the "treating physician rule" anywhere in her briefing; she simply argues  
10 that the objective weight of Dr. Reif's evidence and conclusions is greater than that which should  
11 be accorded to the opinions of Defendant's clinical reviewers. And the *de novo* standard of  
12 review governing this matter certainly entitles the Court to make determinations of the relative  
13 "reliability" of the evidence presented by each side.

14        The Court's *de novo* finding concerning the persuasive nature of Plaintiff's evidence is  
15 driven by several considerations. One is the weight of the evidence of Plaintiff's limitations  
16 concerning standing, sitting, walking, continence, cognitive abilities, and MS-related  
17 psychological/emotional dysfunction, as outlined in the preceding pages. Another is the  
18 credibility and reliability accorded to Dr. Reif, a physician of unchallenged credentials (including  
19 a 20-year history of MS-related research and teaching; *see* CV at AR 8406) who treated Plaintiff  
20 for years leading up to the LTD application and who has consistently and credibly chronicled the  
21 factors (which she observed first-hand and through MRI scans) contributing to her conclusion  
22 that Plaintiff could not return to work.

1 And, finally, there is Aetna’s choice to base its determination on the reports of reviews of  
2 Plaintiff’s medical evidence, rather than conduct its own first-hand examination of Plaintiff. As  
3 the Ninth Circuit observed in Montour v. Hartford Life & Accident Ins. Co., 588 F.3d 623, 634  
4 (9th Cir. 2009), “[w]hile the Plan does not require a physical exam by non-treating physicians, in  
5 this case that choice ‘raise[s] questions about the thoroughness and accuracy of the benefits  
6 determination[.]’” (quoting Bennett v. Kemper Nat’l Services, Inc., 514 F3d 547, 554 (6th Cir.  
7 2008).)

8 Based on its *de novo* review, the Court concludes that the weight of the evidence  
9 unquestionably favors Plaintiff’s position and calls for a reversal of the administrator’s decision  
10 to deny Plaintiff her LTD benefits. The evidence adduced by Plaintiff concerning the restrictions  
11 on her physical, cognitive and emotional abilities attributable to her MS is sufficient to establish  
12 that she was, at the time of her claim, unable to perform “the material duties of her own  
13 occupation.” Defendant’s refusal to credit that evidence is based on evidence and opinions  
14 which do not credibly rebut the weight of Plaintiff’s data, and constitutes a breach of Aetna’s  
15 fiduciary duty under ERISA to “discharge [its] duties with respect to a plan solely in the interest  
16 of the participants and beneficiaries.”

17 The Court is permitted, in accordance with 29 U.S.C. § 1132(a)(1)(B), to “clarify  
18 [Plaintiff’s] rights to future benefits under the terms of the plan.” Having been satisfied that  
19 Plaintiff has proven her inability to discharge the material duties of her sedentary position at  
20 Boeing and established beyond question the lifelong and steadily deteriorating nature of her  
21 medical condition, the Court clarifies Plaintiff’s rights to future Plan benefits by finding that she  
22 is entitled to continuing LTD benefits under the “any reasonable occupation” section of the Plan.  
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1 Defendant is directed to pay her LTD claim to the policy's maximum benefit duration  
2 absent a showing of improvement in her medical condition such that a reasonable physician  
3 would conclude that she could work in "any gainful activity for which [she is], or may  
4 reasonably become, fitted by education, training, or experience and which results in, or can be  
5 expected to result in, an income of more than 60% of [her] adjusted predisability earnings." (AR  
6 8754.) Unless Defendant can establish that Plaintiff is capable of performing such work  
7 productively, full-time, and without undue disruptions and/or absences due to her MS and its  
8 related symptoms, she is to continue to receive LTD benefits to the Plan's maximum duration.  
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10 The clerk is ordered to provide copies of this order to all counsel.

11 Dated May 8, 2018.

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14 The Honorable Marsha J. Pechman  
15 United States Senior District Court Judge  
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